REME COURT. U. S.

Office-Supreme Court, U.S.
FILED
MAR 15 1969
JOHN F. DAVIS, CLERK

No. 1069

In the

Supreme Court of the United States

OCTOBER TERM, 1968

FEDERAL-BRYANT MACHINERY COMPANY,
a corporation, etc.,

Appellant,

vs.

THE DEPARTMENT OF REVENUE OF THE
STATE OF ILLINOIS,

Appellee.

On Appeal From The Supreme Court Of Illinois.

APPELLANT'S BRIEF IN OPPOSITION TO MOTION TO AFFIRM

HARRY H. RUSKIN
69 West Washington Street
Chicago, Illinois 60602
Attorney for Appellant

MARTIN L. BOGOT
GILBERT A. SIEGEL
Of Counsel

The Scheffer Press, Inc.—ANdover 3-6850

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 1069

FEDERAL-BRYANT MACHINERY COMPANY,
a corporation, etc.,

Appellant,

vs.

THE DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS,

Appellee.

On Appeal From The Supreme Court Of Illinois.

APPELLANT'S BRIEF IN OPPOSITION TO MOTION TO AFFIRM

Appellee's Motion to Affirm misstates the issue presented by this appeal. The issue is not, as appellee asserts, a factual question whether appellant was merely an agent for out-of-state machinery builders or was engaged in Illinois in making retail sales; that factual issue was conclusively determined adversely to appellant by the court below. The question presented is rather, as originally stated by appellant in its Jurisdictional Statement (pp. 2-3), whether Illinois can constitutionally impose an occupational privilege tax on a local representative for out-of-

state machinery builders, measured by that representative's gross sales of machines, each of which is built only to meet the particular specifications of a local user, is obtainable only from a builder whose plant is located outside Illinois, and, when completed, is shipped directly from the out-of-state builder to the Illinois user, title passing outside Illinois.

Appellee's argument merely sets forth the disposition of this question by the court below; it makes no attempt to refute appellant's showing that the court below misinterpreted and misapplied decisions of this Court and that the constitutional question presented is substantial.

For the reasons stated above and in appellant's Jurisdictional Statement, appellee's Motion to Affirm should be denied, and probable jurisdiction should be noted.

Respectfully submitted,

HARRY H. RUSKIN
69 West Washington Street
Chicago, Illinois 60602
Attorney for Appellant

MARTIN L. BOGOT
GILBERT A. SIEGEL
Of Counsel